**DHHS - Office of MaineCare Services**
**Rule, State Plan Amendment, and Waiver Status Report**
**July 2021**

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**Please note that all rules are promulgated in compliance with Executive Order of August 24, 2011 "An Order to Improve Review of the Rulemaking Process", detailed at:* ***http://www.maine.gov/tools/whatsnew/index.php?topic=Gov_Executive_Orders&id=182022&v=article2011*** *and the Executive Order of March 4, 2019 "An Order Regarding Administrative Rulemaking detailed at*

https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/Executive%20Order%204.pdf .

**MaineCare Benefits Manual, Section 21, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.**

**WAIVER:** ME.0159, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department plans to submit a waiver amendment in the near future for Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder. The Department is proposing to make changes to comply with legislative directive PL 2021 ch. 29, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023*. The Act provided funding for rate adjustments to account for updated wage, benefit and staffing assumptions for Agency Home Support and Agency Home Support with Medical Add-on.

**AGENCY CONTACT PERSON:** Tom Leet

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 pm, August 23, 2021.

## IN APA PROCESS (RULE HAS BEEN PROPOSED)

**10-144 C.M.R. ch. 101, Chapter II, Section 17, Community Support Services**

The Department of Health and Human Services ("the Department") proposes the following changes to 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 17, Community Support Services.

This rule is proposed in order to enhance safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree. The proposed changes address referrals to and terminations from Community Integration Services and Assertive Community Treatment (ACT) Services for members with Serious and Persistent Mental Illness. Prior to terminating a member's services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. In addition, providers must accept Department referrals for services within seven (7) calendar days and may only decline referrals with written approval from OBH.

The proposed rule also removes the "temporary transition period" from the timeliness and duration of care provisions that were added in a prior rulemaking pursuant to Resolves 2015, ch. 82 and are now permanent.

This rule additionally proposes to remove the definition and requirement to complete the Adult Needs and Strengths Assessment (ANSA). The Department has determined the ANSA is no longer a viable option for assessment and treatment, and this assessment is not being used in practice.

The Department also proposes updates to formatting, citations, and references where necessary, including changing "Office of Substance Abuse and Mental Health Services" to "Office of Behavioral Health" and removing potentially stigmatizing language based on recommendations from the Maine's opioid task force and legislation passed in 2018 to minimize stigma (P.L. 2017, ch. 407).

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 PM on May 21, 2021.
***Comment period: CLOSED***

**Staff:** Melanie Miller

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**10-144 C.M.R. ch. 101, Chapter II, Section 92, Behavioral Health Home Services**

The Department of Health and Human Services ("the Department") proposes the following changes to 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 92, Behavioral Health Home Services.

This rule is proposed in order to enhance safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree. The proposed changes address referrals to and terminations from Behavioral Health Home Services for members with Serious and Persistent Mental Illness. Prior to terminating a member's services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination. In addition, providers must accept Department referrals within seven (7) calendar days and may only decline referrals with written approval from OBH.

Additionally, in furtherance of consent decree principles, this rule proposes to add language for timeliness standards for Adults with Serious and Persistent Mental Illness, consistent with those in Section 17 Community Support Services for this population. These standards require that providers must conduct an initial face-to-face intake or initial assessment visit within seven (7) calendar days of the date of referral. This rule also proposes giving members the option to request to "hold for service" if providers are unable to meet the seven (7) calendar day face-to-face requirement of new referrals but the member would still like to wait until that provider can accept their referral. Members may elect to hold for service only after an agency has adequately informed the member of their other area service options.

Lastly, the Department proposes updates to formatting, citations, and references where necessary, including changing "Office of Substance Abuse and Mental Health Services" to "Office of Behavioral Health" and removing potentially stigmatizing language based on recommendations from the Maine's opioid task force and legislation passed in 2018 to minimize stigma (P.L. 2017, ch. 407).

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 PM on May 21, 2021.
***Comment period: CLOSED***

**Staff:** Melanie Miller

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**10-144 C.M.R. ch. 101, Chapter II, Section 97, Private Non-Medical Institution Services**

This rule is proposed in order to provide clarity and consistency in processes and record-keeping across MaineCare policies and to enhance safeguards and protections of client rights under the *Bates, et al. v. Commissioner, DHHS, et al*, consent decree. The proposed changes address referrals to and terminations from Appendix E Private Non-Medical Institutions with the addition of Section 97.07-10, Termination, and Section 97.07-11, Referrals, as well as increasing frequency for progress note writing in 97.07-4.

Prior to terminating a member's services, providers must receive written approval from the Office of Behavioral Health (OBH); must issue a 30-day advanced written termination notice to the member, with an exception for cases involving imminent harm; and must assist the member in obtaining clinically necessary services from another provider prior to termination.

Providers must acknowledge receipt of Department referrals within three business days for members eligible for Appendix E services and must accept or request permission to decline referrals in accordance with a Department-defined process within five business days of receipt of referral. Providers can only decline a referral with written approval from OBH, otherwise they must admit members within thirty days of receipt of the referral.

This proposed rule also changes the frequency requirement for entering and signing progress notes from a monthly to a daily expectation within Appendix E facilities. This change is made to improve accuracy and quality within member records.

Finally, this proposed rule makes technical, grammatical, and punctuational edits, including updating references to current Department office names.

Hearing Date: No public hearing scheduled. During the Civil State of Emergency declared by the Governor, public hearings are now closed to the public physically attending. During this State of Emergency, the Department will be providing a 30-day comment period instead of a public hearing.

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 PM on February 19, 2021.
***Comment period: CLOSED***

**Staff:** Heather Bingelis

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**Chapter II, Section 101, Medical Imaging Services**

Due to CMS being in comment period for updated guidance from USPSTF, the Department has decided to let the rule lapse until additional CMS guidance is announced.

**Staff:** Cari Philbrick

## ADOPTED OR PROVISIONALLY-ADOPTED

No rules were adopted since the last Rule Status Update.

IN DRAFT

**Chapter 1, Section 1, General Administrative Policies and Procedures**

This rule is proposed to keep MaineCare policies aligned with federal law, clarify policy language, reduce ambiguity, change impractical timelines, clarify departmental responsibilities, increase the Department's ability to implement appropriate and effective sanctions, and ensure the effectiveness and integrity of the MAC.

All the changes in this rulemaking are listed below:

The current rule does not address retroactive enrollment for providers other than federally qualified health centers, rural health centers, and Indian health centers. This rulemaking broadens Sec. 1.03-1(F) to allow for retroactive enrollment for other eligible providers, subject to review and approval by the Department of Health and Human Services (Department) in accordance with 42 CFR §431.108. A request for retroactive enrollment is subject to the Department's review and discretion and is not a guarantee of claim payment or prior authorization. The Department may grant retroactive enrollment back to the Medicare certification date but will not grant a retroactive enrollment date that is more than 365 days prior to the date of the provider's MaineCare application submission.

To comply with 42 CFR § 455.434, this rule adds a section on fingerprint-based criminal background checks (FCBC), mandating that any provider or applicant whose categorical risk level is high must consent to a FCBC. This new section 1.03-1(J) includes relevant criteria for termination or denial of enrollment and which providers and suppliers constitute high categorical risk.

The current 'rounding rule' (Sec. 1.03-8(J)) allows providers to round up a unit of service if the unit of service delivered is equal to or greater than fifty percent. Providers have abused this rule by purposefully providing the minimum services needed to round up to a whole unit. To prevent this and encourage providers to only deliver the amount of covered services that are medically necessary, this rulemaking makes changes so when a partial unit of service is delivered, the provider shall bill for the unit of service provided to the nearest tenths decimal place and will be reimbursed accordingly, rather than manually rounding up or down to the nearest whole unit, though there is an exception for when unforeseen circumstances prevent providers from delivering a whole unit of service. This rulemaking also adds misuse of the "rounding rule" to examples of conduct that could constitute fraud.

MaineCare Benefits Manual, Chapter II, Section 80, which primarily applies to retail pharmacies, previously housed language on the 340B Drug Price Program (340B Program). However, the 340B Program language is better suited in this rule because it applies to all provider types. Hence, this rulemaking adds a section, 1.03-14, on the 340B Program that requires providers or entities who purchase drugs under the 340B program to sign a 340B agreement with the Department and to comply with federal and Health Resources & Services Administration 340B rules and regulations. The Department shall seek and anticipates approval of a state plan amendment related to these changes. Additionally, and separately, the Department shall repeal the 340B Program provisions that are in Ch. II, Sec. 80.09-1(D).

This rulemaking expands non-covered services to include administrative tasks (Sec. 1.06-4(B)(8)), including verification of MaineCare eligibility, updating member contact information, scheduling of appointments, and similar activities. This provision strengthens the Office of MaineCare Services (OMS) Program Integrity Unit's enforcement of the prohibition on billing for administrative tasks, which already exists per current MaineCare rules.

To comply with section 53102 of the Bipartisan Budget Act of 2018, P.L. No. 115-123, this rulemaking updates that the Department will no longer pay and then seek reimbursement, commonly known as pay and chase, from liable third parties for prenatal services.

This rulemaking clarifies (Sec. 1.19-1(C)(2)) that the Department may reimburse providers for covered services rendered during the period following a notice of termination up to the effective date of termination, instead of for a period not to exceed thirty days after the date of receipt of the notice of termination, because providers may not be reimbursed after termination of a provider agreement. The rulemaking also adds that providers must follow the provisions of its provider agreement and the MaineCare Benefits Manual to continue to receive reimbursement for services.

To enable the OMS Program Integrity Unit to implement appropriate sanctions, this rulemaking allows the Department, in its discretion, to consider a request from a provider to impose a lower percentage than 20% recoupment. The rulemaking adds a list of factors in Sec. 1.20-2 for the Department to consider when assessing this type of provider request.

This rulemaking adds other sanctions, such as submitting a plan of correction, so the OMS Program Integrity Unit can ensure providers comply with MaineCare rules and monitor providers who experience rapid growth or changes. Providers who grow rapidly often fail to have adequate infrastructure to provide services of the quality they once did. The additional sanctions are:

- Impose a suspension of referrals to a provider;
- Deny or pend any enrollment applications submitted by a provider;
- Limit the number of service locations a provider may enroll; and
- Limit the number of MaineCare members the provider may serve.

This rulemaking clarifies the provisions in Sec. 1.21 regarding reinstatement following termination or exclusion. The current rule regarding, for example, the time period for reinstatement may be confusing and difficult to apply.

The Department adds a section, 1.24-4, on expedited member appeals that includes the procedure to request an expedited appeal, criteria for the Division of Administrative Hearings (DAH) to consider when deciding whether to grant requests, deadlines for when the Department must take final agency action, and other requirements, per 42 CFR § 431.224. MaineCare Member Services shall send all expedited hearing requests within 24 hours of identifying the request.

The MaineCare Advisory Committee (MAC) has developed structural and process changes to improve its function and efficiency, which must be put into Sec. 1.25. One additional change to the MAC, originating outside the MAC, adds that members of the Committee may not transfer their appointment or any other responsibilities, duties, and rights as Committee members, including voting power, to any other person. This change is meant to protect the integrity of the

MAC and membership voting power. The MAC proposed changes include increasing MAC membership, including at least two Medicaid beneficiaries as members, and other changes.

This proposed rulemaking also makes the following changes:

- Establish a timeframe for when providers need to update OMS of changes to their National Provider Identifier or enrollment information;
- Require providers who change their name or "doing business as" name to change their MaineCare Provider Agreement;
- Clarify that providers must take all reasonable and appropriate steps requested by the Department to transition members before changes of ownership, closures, and disenrollment, except in the case of reasonably unforeseen circumstances, and, upon request, submit a transition plan to the Department for review and approval;
- Update the rule in accordance with 10-144 Code of Maine Rules, Chapter 128, Certified Nursing Assistant and Direct Care Worker Registry Rule, to require agencies hiring direct care workers (DCWs) to check the Maine Certified Nursing Assistant and Direct Care Worker Registry to ensure DCWs are eligible for employment in Maine and comply with all requirements stipulated in the rule;
- Add that a provider may not bill MaineCare for an interpreter service supplied by an entity in which the provider, any owner of the provider, or an immediate family member of the provider or any of its owners has any direct or indirect ownership or financial interest;
- Change the billable amount for interpreter services to be the lesser of the interpreter's usual and customary charge and the rate authorized by the Department;
- To comply with section 53102 of the Bipartisan Budget Act of 2018, increase the number of days, from 30 to 100, that providers must wait for a response from an absent parent's third party insurance before billing MaineCare;
- Add that the Department may impose sanctions on providers who fail to provide information to the Department or to otherwise respond to Departmental requests for information within a reasonable timeframe established by the Department;
- Add a penalty of 25% of MaineCare payments for covered goods and services where the provider's records lack a required signature by a member or the member's guardians;
- Change penalties to equal 20%, as opposed to not exceeding 20%, when mandated records are missing but the provider is able to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary;
- Make clear the Department's authority to exclude individuals, entities, and providers from participation in MaineCare for any reason identified in 42 C.F.R. Part 1001 or 1003;
- Add considerations for reinstatement from termination or exclusion to include the conduct of the individual or entity prior to and after the date of the notice of exclusion; and
- Clarify that providers may request an informal review within 60 calendar days from the date of written notification of the Department's alleged grievance and extend the deadline to the next business day if it falls on a weekend or holiday.

**Staff:** Henry Eckerson

**Chapter 1, Section 5, COVID-19**

This COVID-19 Rule impacts the following sections of MaineCare policy: Chapter I, Section 4 (Telehealth Services); Chapter III, Section 17 (Community Support Services); Chapters II and III, Section 28 (Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations); Chapter III, Section 25, (Dental Services); Chapters II and III, Section 65 (Behavioral Health Services); Chapters II and III, Section 67 (Nursing Facility Services); Chapter II, Section 80 (Pharmacy Services); Chapter II, Section 90 (Physician Services); Chapter II, Section 92 (Behavioral Health Home Services); Chapter II, Section 96 (Private Duty Nursing and Personal Care Services); Chapters II and III, Section 97 (Private Non-Medical Institution Services); and Chapter VI, Section 1 (Primary Care Case Management).

This emergency rulemaking implements the following changes to the COVID-19 Rule:

1. **Pharmacy Services:** The Department is allowing pharmacies to bill for COVID-19 testing services.

2. **Telehealth Services:** The Department is making a correction to non-facility and facility rates paid under three different CPT/HCPC codes and adding two additional codes.

3. **Private Non-Medical Institution Services:** The Department is authorizing Advanced Practice Providers as authorized providers to order and recertify a Service Plan and Plan of Care as described in Chapter II, Section 97.08-1(A) and 97.08-3; allowing Direct Support Professionals (DSP) to qualify as "Other Qualified Child Care Facility Staff;" increasing per diem rates for facilities experiencing a confirmed outbreak of COVID-19; and adding DSPs, Mental Health Rehabilitation Technicians (MHRT-1) and Mental Health Rehabilitation Technicians-Community (MHRT-C) to the list of Direct Service Staff.

4. **Private Duty Nursing and Personal Care Services:** The Department is authorizing Advanced Practice Providers as qualified providers to order, authorize, and re-authorize a member's Plan of Care.

5. **Nursing Facility Services:** The Department is allowing facilities to relocate a member with an Acquired Brain Injury to quarantine separate from the ABI Unit if the member has, or has been exposed to, COVID-19; allowing Nursing Facilities to request an additional seven days for bed holds when the member has been admitted to a hospital with a COVID-19 diagnosis; and allowing nursing facilities to relocate and quarantine residential care patients to nursing facility beds and Nursing Facility patients to residential care beds in response to COVID-19.

6. **Dental Services:** The Department is adding additional codes to allow triage and screening via telehealth.

7. **Behavioral Health Home Services:** The Department is waving the requirements of annual reassessments and allowing for the continuance of services under previously-rendered assessments.

8. **Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations:** The Department is allowing individuals certified as DSPs to qualify as direct care staff.

9. **Behavioral Health Services:** The Department is allowing individuals certified as DSPs to provide crisis services; allowing DSPs and MHRT-Cs to provide community-based treatment; and disbursing a per member per month supplemental payment to behavioral health providers under Sections 17, 28, and 65.

10. **Incentive Payments:** The Department will pay a per member per month incentive payment to providers of qualifying services to MaineCare children for primary care preventive services when the member receives both a well-care visit and immunization and for dental services for each unique member who receives a dental service during the month.

Except as otherwise noted in the COVID-19 Rule, the changes shall be retroactive to March 18, 2020. The Executive Order suspended and modified the relevant provisions of the MAPA in order for these emergency rule changes to: (1) remain in effect until the later of the end of the Federal Proclamation of Emergency or the end of CMS's approval of the MaineCare program changes, even if that period exceeds ninety days; and (2) automatically repeal upon termination of the Federal Proclamation of Emergency or the end of CMS's approval of the MaineCare program changes (whichever is later), without further rulemaking by the Department.

Staff: Derrick Grant

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**Chapter I, Section 6, Global HCBS Waiver Person-centered Planning and Settings Rule**

The proposed rule includes requirements for person-centered service planning and for settings in which home and community-based waiver services ("HCBS") are provided, including requirements for provider-owned or controlled residential settings. The rule supports enhanced quality in HCBS programs, adds protections for individuals receiving services, and ensures that Members have full access to the benefits of community living and to receive services in the most integrated setting.

The rule defines person-centered planning requirements and creates a more outcome-oriented definition of home and community-based settings, rather than one based solely on a setting's location, geography, or physical characteristics. The rule requires that the person-centered planning process be directed by the individual with long-term support needs and may include a representative whom the individual has freely chosen, and others chosen by the individual to contribute to the process. The rule describes the minimum requirements for person-centered

plans developed through this process, including that the process results in a person-centered plan with individually identified goals, reflective of personal preferences and choices, that contribute to assuring the Member's health and welfare. This planning process, and the resulting person-centered service plan, will assist the individual in achieving personally defined outcomes in the most integrated community setting possible.
The proposed rule defines and describes the requirements for home and community-based settings where HCBS waiver services may be provided under the following sections of the MaineCare Benefits Manual:

Section 18: Home and Community-Based Services for Adults with Brain Injury;

Section 19: Home and Community Benefits for the Elderly and Adults with Disabilities;

Section 20: Home and Community-Based Services for Adults with Other Related Conditions;

Section 21: Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder; and

Section 29: Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

**Staff: Heather Bingelis**

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**Chapter II, Section 9, Indian Health Services**

This rule is proposed in order to reorganize the material in the current rule for clarity purposes by uniformly and specifically identifying services and supplies included within the encounter visit as all-inclusive rate (AIR) services; identifies separately-billable services and supplies; and organizes and refines previous language. The rulemaking also lists the specific services included in the MaineCare State Plan that are covered; provides additional language to clarify previously omitted or vague directives; clarifies separate reimbursement for all FDA-approved intrauterine devices; and updates or removes outdated references.

**Staff:** Anne E. Labonte

**Chapter II, Section 18, Home and Community-Based Services for Adults with Brain Injury Home and Ch. III, Allowances for Home and Community-Based Services for Adults with Brain Injury**

The proposed rules for Chapters II and III, Section 18, implement changes required by the Centers for Medicare and Medicaid Services (CMS)—namely, removal of services from the waiver that duplicate State Plan services. The proposed rules delete the following services from Section 18: Community/Work Reintegration-Group, Community/Work Reintegration-Individual, Self-Care/Home Management Reintegration-Group, and Self-Care/Home Management Reintegration-Individual. These services will remain accessible in MaineCare Benefits Manual, Section 102, Rehabilitative Services. This change will be effective upon approval of a waiver amendment by the CMS.

The proposed rule for Chapter II, Section 18, also implements changes made in the renewal application for this 1915(c) waiver. The renewal has been approved by the CMS and is effective July 1, 2019.

Proposed changes in Chapter II, Section 18 include technical corrections and formatting updates for clarity, as well as the following:

In the Definitions section, the proposed rule clarifies wording for accuracy. In Determination of Eligibility, the proposed rule removes the requirement for specific rehabilitation goals. It deletes specific details regarding the Department's assessment, and deletes the requirement for assessment no more than three months prior to application. The proposed rule adds a adds a requirement for completion of the MED assessment or BMS99 for ICF/IID level of care by the Department or its authorized agent, clarifies that all members who do not meet Priority 1 waitlist requirements will be identified as Priority 2, and adds requirements, including timeframes, for waiver applicants' responses to funded offers.

In Establishing Medical Eligibility and in development of the preliminary care plan and final care plan, the proposed rule replaces "Care Monitor" with "OADS staff." In Care Plan Development, the proposed rule clarifies that the ASA will complete the assessments, and removes specific language regarding the Home Support Services provider's role in developing the final Care Plan. In Covered Services, the proposed rule adds language clarifying responsibilities of the Care Coordinator, and adds language regarding provision of Care Coordination services to members discharging from an institution. The proposed rule deletes the reference to the minimum number of 1:1 direct support hours on a daily basis, and also deletes Community/Work Reintegration and Self-Care/Home Management. For Home Support (Per Diem) Level III neurobehavioral services, the proposed rule adds language further clarifying the service. In Noncovered Services, the proposed rule updates the names of current MaineCare policies.

In the Limits section, the proposed rule deletes language in order to clarify that the limit on Care Coordination Services has been changed to 400 units per year. It deletes reference to Community/Work Reintegration limits and Self-Care/Home Management Reintegration limits.

The proposed rule adds a provision that if the member's health and welfare are in jeopardy, the Department can approve services above the limits for an authorized period of time. In the Duration of Care section, the proposed rule fixes a wording error in one of the criteria for involuntary termination of services.

In Provider Qualifications and Requirements, the proposed rule removes the CARF accreditation requirement for Care Coordination agencies, providers of Home Support Level II and III, and Work Support. It deletes the requirement for Behavior Regulations training as well as the provider qualifications and requirements for Self-Care/Home management Reintegration and Community/Work Reintegration. The proposed rule changes Certified Brain Injury Specialist (CBIS) to Certificate of Fundamentals of Brain Injury, the proposed rule also adds a requirement for providers of Home Support-Quarter Hour-Level I to comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements by January 1, 2020.

**Staff**: Heather Bingelis

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**Chapter II, Section 20, Home and Community Based Services for Adults with Other Related Conditions**

The proposed rule updates and clarifies existing policy language related to Care Plan Development, Covered and Non-Covered Services, and Provider Qualifications and Requirements. The proposed changes to MaineCare Section 20 include provisions of the most recent renewal of 1915(c) waiver ME.0995, effective July 1, 2018. The proposed rule includes technical corrections and formatting updates for clarity.

The proposed rule updates the definition Intellectual Disability, and deletes the definition of the Money Follows the Person-Homeward Bound Transition Coordinator. In Care Plan Development, the proposed rule updates procedures, and also deletes references to Money Follows the Person-Homeward Bound and to Home Support or Personal Care Providers in Procedures for Developing the Care Plan

In Covered Services, the proposed rule deletes reference to services furnished four (4) or more hours per day on a regularly scheduled basis for one or more days per week. For Home Support Services (Per Diem), it changes from four (4) to six (6) the maximum number of members served in these facilities. For Home Support Services and for Personal Care Services, the proposed rule deletes the provision that an individual Personal Care Assistant, Personal Support Specialist, or Direct Support Professional shall not be reimbursed for providing more than a total of 40 hours per week of services delivered to any one individual waiver member.

In Noncovered Services, the proposed rule adds "comparable or duplicative" to the provision specifying that a member may not receive services under Section 20 if the member is in a residential treatment facility or if the member is receiving services in an institution, and also updates references to other MaineCare rules. In Provider Qualifications and Requirements, the proposed rule adds provider qualifications and requirements for Electronic Visit Verification, effective January 1, 2020.

**Staff:** Heather Bingelis

**Chapter II, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder (draft)**

This rule is proposed to align and comply with 42 C.F.R. 441.301(c), the federal Home and Community Based Settings (HCBS) rule. Additionally, the changes add a new provision that requires licensing for all Home Support-Agency Per Diem services and includes a provisional Provider Authorization process for all newly enrolled providers and for providers seeking to add services to the existing array of services. Moreover, the proposed rule updates reimbursement rates for certain services pursuant to the State supplemental budget, P.L. 2019, ch 616 and adjusts the annual combined funding cap for Community Support, Work Support-Individual, and Work Support-Group. Additionally, the rule is proposed to align and comply with the federal 21st Century Cures Act (P.L. 114-255) for providers of Home Support-Quarter Hour services to meet Electronic Visit Verifications standards and requirements. The rule is proposed to align with the federally approved 1915(c) Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver effective July 1, 2020, and to increase consistency between Section 21 and Section 29, Ch. II (Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder) rules.

The federal Home and Community Based Settings Rule, referred to as the Settings Rule, specifies that service planning for HCBS waiver members must be developed through a Person-Centered Planning (PCP) process that is, among other requirements, member-directed, reflective of the members cultural preferences, and includes individuals of the members choosing. Moreover, the resultant service plan must, among other requirements. reflect the services and supports that are important to the Member as well as the preferences for the delivery of such services. This rule will add language to outline requirements for the PCP Process and the PCP as it relates to recipients of Section 21 services. Separately, the Department is developing a Global HCBS Settings Rule that will make changes to all the HCBS MaineCare rules to implement in more detail the requirements of the federal Settings Rule.

This rule adds a provision that all service locations providing Home Support-Agency Per Diem, except for 1- and 2-bed locations owned or leased by the Member or the Member's parent(s), sibling(s), or legal guardian(s), must be licensed or conditionally licensed pursuant to 10-144 C.M.R. ch. 113, Regulations Governing the Licensing and Functioning of Assisted Housing Programs, by DHHS's Division of Licensing and Certification. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for these changes.

Additionally, this proposed rule includes a Provisional twelve (12)-month Provider Authorization process to ensure that providers have a thorough understanding of the requirements of the service(s) to be added, the clinical and administrative capability to carry out the intended service(s), and have taken steps to assure safety, quality, and accessibility of the service(s). This process will apply to the addition of new services by any given provider.

In accordance with P.L. 2019, ch. 616, An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021, this proposed rule works concurrently with the proposed Ch III rulemaking that increases the rates for Supported Employment Services, Career Planning Services, Employment Specialist Services, and Home Support_ Quarter Hour Services effective January 1, 2021.

Additionally, the rule adjusts the combined annual funding cap that includes Community Support, Work Support-Individual, and Work Support-Group, raising it to $39,875.32.

The proposed rule requires that, effective January 1, 2021, every provider of Home Support-Quarter Hour services must comply with Maine DHHS Electronic Visit Verification ("EVV") system standards and requirements. This complies with the 21st Century Cures Act (P.L. 114-255), as codified in 42 U.S.C. § 1396b(l)(1).

The rule is proposed to align with service descriptions and covered services, including limits on sets of services, as set forth in the federally approved 1915(c) Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver and increase consistency with Section 29, Ch II rule. The following covered services and/or limits have been updated: Assistive Technology, Career Planning, Crisis Intervention Services, Home Support-Per Diem, Family Centered Support. Home Support-Quarter Hour, Non-Medical Transportation, Specialized Medical Equipment, and Work Support Group.

Additionally, the proposed rule separates Community Supports into three tiers of service delivery: Community Only-Individual, Community Only-Group, and Center-Based, to more broadly support individualized needs of the participant population.

Further, the proposed rule eliminates Counseling as a Covered Service effective December 31, 2020 as the service is more comprehensively offered with the State Plan. Outpatient services offered within the State Plan, MaineCare Benefits Manual Ch. 101, Section 65, include professional assessment, counseling and therapeutic, medically necessary services provided to members to improve functioning, address symptoms, relieve excess stress and promote positive orientation and growth that facilitate increased integrated and independent levels of functioning.

Moreover, the rule aligns with and increases consistency in the aforementioned 1915 (c) waiver and Section 29 rule regarding provider qualifications. Wording and format changes have been made to Provider Qualifications and Requirements for Direct Support Professionals (DSPs) for Career Planning and Employment Specialist Services. For DSPs, the proposed rule also deletes the requirement for grievance training prior to working with Members and adds a requirement for DSPs who provide Crisis Intervention to receive behavioral intervention training.

The proposed rule includes numerous technical edits, addressing format and punctuation issues, eliminating redundant language, and improving readability. It corrects the format of legal citations, and updates definitions for Autism Spectrum Disorder, Intellectual Disability, Activities of Daily Living, Instrumental Activities of Daily Living, Person -Centered Plan, and Shared Living.

**Staff:** Heather Bingelis

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**Chapter III, Section 21, Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder**

The Department is adopting this emergency major substantive rule in accordance with P.L. 2019, ch. 616, Part A, Sec. A-7, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal*

*Years Ending June 30, 2020 and June 30, 2021*. The Act provides funding to increase reimbursement rates for specific procedure codes in Chapter III, Section 21, Allowances for Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder.

The Department has determined that these rate increases are necessary to avoid an immediate threat to public health, safety, or general welfare. The Department's findings of an emergency are as follows: Delivery of Medicaid services is predicated on an adequate provider pool to treat and meet the unique needs of the most vulnerable populations of members; and The increases will seek to ensure reimbursement rates are adequate to provide members with access to important services through an adequate provider pool.

The emergency major substantive rule increases the rates effective January 1, 2021 for four (4) services: Supported Employment Services, Career Planning Services, Employment Specialist Services, and Home Support-Quarter Hour Services. The Maine Legislature has authorized the Department to adopt rules with a retroactive application where the Department has sought CMS approval for such changes, and where the change does not have an adverse financial impact on any MaineCare provider or Member. 42 M.R.S. 42(8).

This emergency major substantive rule is effective upon adoption and filing with the Secretary of State. Pursuant to 5 M.R.S. § 8054 (3), this emergency major substantive rule may be effective for up to 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

**Staff:** Heather Bingelis

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**Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder**

The Department is adopting this emergency major substantive rule in accordance with P.L. 2019, ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. The Act provides funding to increase reimbursement rates for specific procedure codes in Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.

The Department has determined that these rate increases are necessary to avoid an immediate threat to public health, safety, or general welfare. The Department/s findings of an emergency are as follows: Delivery of Medicaid services is predicated on an adequate provider pool to treat and meet the unique needs of the most vulnerable populations of members; and The increases will seek to ensure reimbursement rates are adequate to provide members with access to important services through an adequate provider pool.

The emergency major substantive rule increases the rates effective January 1, 2021 for four (4) services including: Supported Employment Services, Career Planning Services, Employment Specialist Services, and Home Support-Quarter Hour Services.

Pursuant to 5 M.R.S. § 8054 (3), this emergency rule may be effective for up 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

**Staff:** Heather Bingelis

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**Chapters II & III, Section 43, Hospice Services**

The Department of Health and Human Services proposes these rule changes to Chapters II & III, Section 43, Hospice Services to incorporate the Electronic Visit Verification (EVV) requirements in compliance with Section 12006 of the 21st Century CURES Act (P.L. 114-255), as codified in 42 U.S.C. § 1396b(l)(1). In-home hospice visits conducted as part of such services must be electronically verified with respect to: the type of service performed; the individual receiving the service; the date of the service; the location of the service delivery; the individual providing the service; and the time the service begins and ends. Providers may utilize their own EVV system, so long as the data from the provider-owned system can be accepted and integrated with the Maine DHHS EVV system and is otherwise compatible. Inpatient Respite Care, General Inpatient Care, and Physician Services non-hospice services are exempt from EVV compliance. Effective January 1, 2023, in-home hospice visits are subject to EVV requirements.

**Staff:** TBD

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**10-144 C.M.R., Repeal of Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 68, Occupational Therapy Services and Proposal of Chapters II & III, Section 85, Physical and Occupational Therapy Services**

The Department is proposing to repeal Chapters II and III of Section 68 (Occupational Therapy Services) and proposing changes to Chapters II and III of Section 85 (Physical Therapy Services) in order to combine these services under a single policy: Physical and Occupational Therapy Services. This rulemaking clarifies these services. In particular, the combined proposed rule covers services that are designed to return
MaineCare members to a baseline previous level of function, maximize a new best level of function, maintain level of function, in order to promote individual independence.

In Chapter II, the Department proposes amending services to allow adults one (1) evaluation per condition or event and requires prior authorization for all treatments. MaineCare members who are under the age of twenty-one (21) shall receive all medically necessary services without prior authorization. Finally, the Department is proposing minor technical edits.

In Chapter III, the Department is proposing adding and removing codes to align with currently covered codes as follows:

1. Code 92605 is being eliminated due to lack of utilization.
2. Codes for Physical Therapy 97001 and 97002 are being eliminated and replaced with codes 97161, 97162, 97163, and 97164.
3. Codes for Occupational Therapy 97003 and 97004 are being eliminated and replaced with codes 97165, 97166, 97167, and 97168.
4. Code 97762 is being eliminated and replaced with code 97763.
5. Code 97532 is being eliminated and replaced with 97129 and 97130.
6. Code 96111 is being eliminated and replaced with codes 96112 and 96113.
7. Code 97124 reimbursement is being increased from $9.58 to $9.59 for Occupational Therapy, to match Physical Therapy.
8. Code 97598 reimbursement is being increased from $23.53 to $23.54 for Occupational Therapy, to match Physical Therapy.
9. Code 95992 is being added for reimbursement for Canalith repositioning procedure(s).
10. Code 97799 is being added for reimbursement unlisted medicine/reimbursement.

Finally, the Department is proposing minor language and coding edits.

Staff: Cari Philbrick

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**10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter 101, MaineCare Benefits Manual, Chapters II and III, Section 93, Opioid Health Home Services**

The Department of Health and Human Services ("the Department") proposes this rule change in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapters II, Section 93, Opioid Health Home Services to improve access to treatment, reduce administrative barriers to providing Medication Assisted Treatment (MAT), promote evidence-based treatment standards, and reinforce the importance of Opioid Health Home (OHH) integration with primary care. Additionally, the Department of Health and Human Services ("the Department") proposes this rule change in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 93, Opioid Health Home Services to

- Outline the various payment tiers and per member per month rates that are associated with the member's Level of Care and need for additional supports.
- Introduces two new Levels of Care for OHH services:
  - A Medication Plus Level of Care that does not require any OUD counseling. This tier is intended to ensure individuals have the option of still receiving medication for OUD, without electing to participate in OUD counseling.
  - A Methadone Level of Care, which allows for individuals who receive Methadone Medication Assisted Treatment (MAT) to benefit from the team-based care delivery model of the OHH.
- Add a pay-for-performance provision that will withhold four (4) percent of OHH payments, pending the OHHs performance on three measures of OHH quality and effectiveness of service. The measures include assessing whether members in OHH

Maintenance and Induction/Stabilization Level of Care have attended an annual primary care visit, had continuous pharmacotherapy as part of their MAT, and are involved in regular employment or other forms of community engagement. While the methodology for this pay-for-performance provision is detailed in rule, MaineCare will evaluate the need for adjustments to ensure OHH providers are not inappropriately penalized for the costs or changes in quality/utilization that result from COVID-19.

- Outline performance thresholds that determine if OHHs receive the full four percent and if they are eligible for a pay-for-performance surplus payment.

**Staff: Henry Eckerson**

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**10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter II, Section 94, Early and Periodic Diagnosis, Screening, and Treatment Services (EPSDT)**

This rulemaking will propose language adopted during the COVID emergency to allow for one additional health assessment visit per member within a year following an initial assessment via Telehealth for each age shown on the MaineCare Bright Futures periodic health assessment schedule (MBM, Ch. II, Section 96, Appendix 1).

**STAFF:** Melanie Miller

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**Chapter II, Section 95, Podiatric Services**

This rule is being proposed to add coverage of Hyperbaric Oxygen Therapy. Specifically, language in Section 95.05, Restricted Services, is being added to cover supervision of the Hyperbaric Oxygen Chamber which is a covered service in Section 45, Hospital Services.

The Department also proposes removing the outdated prior authorization requirement for bunion surgeries. Additionally, the Department is updating the links for Section 95.04-3 Orthotic Services, and Section 95.08(A) Reimbursement. Finally, the Department is performing minor technical edits.

**Staff:** Cari Philbrick

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**10-144 C.M.R. ch. 101, Chapter II, Section 97, Private Non-Medical Institution Services**

This rule is being amended in order to provide clarity to the services provided in PNMI Appendix D facility and to incorporate federal standards to come in compliance with the Families First Preventions Services Act for Qualified Residential Treatment Programs.

**Staff:** Melanie Miller

**Chapters II and III, Section 102, Rehabilitation Services**

The rule is being amended to align with the new Home and Community Based Services for Adults with Brain Injury. Will update code 97532 to G0515 ST. Will update codes to comply with National Correct Coding Initiative due to annual deletion of codes by the American Medical Association. Will look to add group coverage for Intensive Integrated Neurorehabilitation.

**STAFF:** Melanie Miller

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**Chapter II, Section 107, Psychiatric Residential Treatment Facilities**

This rule is being proposed in order to update Section107, Chapter II, Psychiatric Residential Treatment Facilities of the MaineCare Benefits Manual in order to clarify that for the purposes of this rule, a PRTF is considered an inpatient facility for the purposes of the Rights of Recipients of Mental Health Services Who are Children in Need of Treatment. As such, this clarification will allow PRTF facilities to perform locked seclusion, when determined to be medically necessary following the approval process described in rule. This allowance will require striking 107.09-01.E, which is a prohibition of locked seclusion. Language stating the Department will seek approval from the Centers for Medicare and Medicaid Services (CMS) for this section have been struck, as the Department now has CMS approval for these services. Additionally, the table of contents have been updated to correct 107.02-08 from "Individual Certification of Need" to "Clinical Certification of Need" for consistency within the rule, and page numbers have been updated accordingly. This rulemaking will additionally update the modifier for BCBA Services to relieve a system conflict.

**Staff:** Melanie Miller

## STATE PLAN AMENDMENTS

**11-005B Reimbursement SPA**
**15-023- PNMIs on Remote Islands -** Submitted 12/31/2015
**16-008 Behavioral Health Services -** Submitted 06/30/2016
**16-010 Increased reimbursement rates to select Section 97, Section 28 and Section 17 providers**. **-** Submitted 07/01/2016
**16-011 Community Support Services –** Submitted 06/30/2016
**16-012 I**ncrease reimbursement for Appendix C, Private Non-Medical Institutions (PNMI) and Adult Family Care Homes, pursuant to Public Law 2016, Chapter 481, Part C. **-** Submitted 09/13/2016
**16-015 Personal Care Services-** Submitted 09/30/2016
**16-018 Podiatric Services -** Submitted 12/30/2016
**17-0011 Physical and Occupational Therapy** – Submitted 06/14/2017
**17-0013 PNMI Appendix C and Adult Family Care Services** – Submitted 09/29/2017
**17-0016 Personal and Home Care** – Submitted 09/29/2017
**17-0018 Consumer Directed Attendant Services, Private Duty Nursing and Personal Care** – Submitted 12/15/2017
**18-0008 Medical Supplies and Durable Medical Equipment** – Submitted 06/13/2018
**18-0017 Adult Family Care Services, Consumer Directed Attendant Services, Community Support Services, Developmental and Behavioral Clinic Services, Day Health Services, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations, Behavioral Health Services, Private Duty Nursing and Personal Care Services, and PNMI** – Submitted 09/28/2018
**18-0019 Targeted Case Management** – Submitted 09/28/2018
**19-0003 Chiropractic Services** – Submitted 06/28/2019
**19-0004 Speech and Hearing** – Submitted 03/29/2019
**19-0020 Behavioral Health Services** – Submitted 9/30/2019
**20-0002 Ambulance Services** – Submitted 2/24/2020
**20-0003 Rural Health Clinic Services** – Submitted 2/24/2020
**20-0012 Behavioral Health Services** – Submitted 3/27/2020
**20-0014 – PNMI Services** – Submitted 3/31/2020
**20-0027 – CHIP Services** – Submitted 12/23/2020
**20-0029 – PNMI Services –** 09/29/2020
**21-0002 – NF Services** – Submitted 03/31/2021
**21-0003 – MAT** – Submitted 03/31/2021

## WAIVER AMENDMENTS/RENEWALS

**WAIVER AMENDMENT** ME.0995: Home and Community Based Services for Members with Other Related Conditions

The Department plans to submit a waiver amendment in the near future for Section 20, Home and Community Based Services for Adults with Other Related Conditions. The proposed amendment seeks to update the eligibility groups served in Appendix B of this waiver to include the Adult Group as specified in 42 CFR 435.119. Additionally, the proposed amendment attempts to remove an outdated reference in Appendix C-2 limiting homes to only four participants eligible for service.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER AMENDMENT** ME.0276: Home and Community Benefits for the Elderly and Adults with Disabilities Waiver

The Department plans to submit a waiver amendment in the near future for Section 19, Home and
Community Benefits for the Elderly and Adults with Disabilities.

- Updated Appendix A: Waiver Administration and Operation to create consistency across waiver programs;
- Updated the eligibility groups served in this waiver within Appendix B: Participant Access and Eligibility;
- Removed limits on care coordination such that participants may receive unlimited care coordination services based on their medical needs within Appendix C: Service Specifications;
- Included Certified Occupational Therapist Assistant (COTA) under the direct supervision of a Registered Occupational Therapist as a qualified provider of Care Coordination Services within Appendix C;
- Revised the service limit for Personal Care Services within Appendix C: Service Specifications to align waiver requirements and the MaineCare rule;
- Removed all Assistive Technology (AT) services from the monthly program cap within Appendix C: Service Specifications and Additional Limits;
- Included Advanced Practice Providers (Physicians Assistants, Nurse Practitioners, and Clinical Nurse Specialists) as qualified providers to order and recertify a Plan of Care within Appendix C: Participant Services;
- Reduced the minimum age of an Attendant under the Participant-Directed Option to 17 years of age within Appendix C: Service Specifications;
- Added language to further define the Person-Centered Planning (PCP) process, namely that the process is member directed, reflective of individual preferences and goals, and overseen by the Service Coordination Agency (SCA), to align and comply with the federal Home and Community Based Setting Rule within Appendix D: Service Plan Development;

o Clarified roles and responsibilities (including authority to reduce, suspend, or deny services) of the SCA, the Fiscal Intermediary, and the Assessing Services Agency (ASA) Assessor located within Appendix F: Opportunity to Request a Fair Hearing; and
o Amended reimbursement method for the SCA providing care coordination services from fee for service to a per member per month reimbursement within Appendix C: Service Specifications and Appendix I: Financial Accountability.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER RENEWAL** Section 21, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department plans to submit a waiver renewal in the near future for Section 21, Home and Community-Based Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder. The Department consulted Maine's five federally recognized tribes on the proposed change during our January 7, 2020 tribal consultation conference call. The waiver was previously approved by the Centers for Medicare and Medicaid Services (CMS) for five years from July 1, 2015 until June 30, 2020. The main purpose of this renewal is to help ensure people receiving services under Maine's ME.0159 waiver have full access to benefits of community living and the opportunity to receive services in the most integrated setting by continuing this waiver program for another five years beginning July 1, 2020. The major changes in the renewal are as follows:

- **Appendix A:** Waiver Operational and Administrative Functions have been updated.
- **Appendix B:** Eligibility Groups Served in the Waiver and Post-Eligibility Treatment of Income have been updated.
- **Appendix C:**
  - Service Definitions for Per Diem Home Support, Adult Foster Care/Shared Living, Home Support – Quarter Hour, Work Support-Individual, Work Support-Group, Community Support, Career Planning, and Family Centered Support have been revised to incorporate requirements for the federal Home and Community-Based Services Settings Rule.
  - Service Definitions for Per Diem Home Support, Adult Foster Care/Shared Living, Community Support, Work Support-Group, Work Support-Individual, Family Centered Support, Employment Specialist, Career Planning, and Counseling have been updated for accuracy and completeness.
  - Provider Qualifications have been updated for Direct Support Professional for Career Planning, Employment Specialist, Work Support-Group, and Work Support-Individual.
  - Counseling Services will be phased out, effective December 31, 2020. These services are accessible through the State Plan.

  - Work Support-Group will be phased out effective December 31, 2020, consistent with the federal Home and Community-Based Services Settings Rule.
  - No new participants and no new providers will be added to Family-Centered Support effective December 31, 2020. Members currently living in these homes may continue to receive this service.
  - Payment for services furnished by relatives (C-2-e) has been revised/updated to bring consistency between the waiver and the MaineCare rule regarding payment to legal guardians for providing Shared Living services.
  - A Provisional Provider Approval was added to C-2-f.
- **Appendix D:**
  - Plan Development has been updated.
  - Qualifications for Mental Health and Children's Case Management have been added.
- **Appendix F:** The State Grievance and Complaint System has been updated.
- **Appendix G:**
  - Protocols and processes for reportable events; critical incidents; and allegations of abuse, neglect and/or exploitation have been updated and included.
  - Removed one performance measure in G-c.
  - Added one performance measure in G-d.
- **Appendix H:** The System Improvement Plan has been updated.
- **Appendix I:** Financial Integrity, Accountability, and Rate Setting Methodology has been updated.
- **Appendix J:** Cost Neutrality and Derivation of Estimates for the five years of the waiver renewal (through June 30, 2025) have been updated and included.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER AMENDMENT** Section 21, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department plans to submit a waiver amendment in the near future for Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder. The Department is proposing to make changes to comply with legislative directive PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. The Act provided funding for rate adjustments and cap increases to reflect the rate models prepared for the Department by Burns & Associates, Inc. for Section 18, Home and Community-Based Services for Adults with Brain Injury and Section 20, Home and Community Based Services for Adults with Other Related Conditions. The increased rates and caps will be effective starting January 1, 2021. Additionally, this amendment will seek to require the licensing of all Section 21 Home Support- Agency Per Diem settings, commonly

called Agency Group Homes.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER AMENDMENT** Section 21, Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department plans to submit a waiver amendment in the near future for Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder. The Department is proposing to separate Community Supports into different tiers of service delivery: Community Support-Individual ($11.20 hr), Community Support-Group ($7.13 hr), and Community Support Center-Based ($5.17 hr). The new service tiers will have updated requirements and limits. The three new service tiers will utilize the rate structure reflected in the rate models prepared for the Department in July 2020 by Burns & Associates, Inc. Finally, the Department proposes to increase the associated cost limit concurrently with the rate changes to ensure waiver members do not lose access to covered services.

***Comment period: CLOSED***

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**WAIVER AMENDMENT** ME.0276: Home and Community Benefits for the Elderly and Adults with Disabilities

The Department plans to submit a waiver amendment in the near future for Section 19, Home and Community Benefits for the Elderly and Adults with Disabilities. The waiver serves older adults and adults with disabilities who need nursing facility level of care to remain at home so they can live independently in their communities. The Department is proposing to make changes to comply with legislative directive PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. The increased rates are effective April 1, 2020. Rates have increased for codes related to Personal Care Services. The Department is also proposing to increase the annual cost limit (Appendix B-2-a) concurrently. The Department proposes to increase the annual cost limit to $78,780, and to increase the monthly cap to $6,565 (Appendix C-4).

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

**WAIVER AMENDMENT** ME.1082: Home and Community Based Services for Members with Brain Injury

The Department plans to submit a waiver amendment in the near future for Section 18, Home and Community Based Services for Adults with Brain Injury. The Department is proposing to make changes to comply with legislative directive PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. The Act provided funding for rate adjustments to reflect the rate models prepared for the Department by Burns & Associates, Inc. Increased rates will be effective starting July 1, 2020. Rates have been increased for Home Support – Level I (Quarter Hour), Home Support – Remote Support (Monitor Only), Home Support – Remote Support (Interactive Support), Career Planning, Employment Specialist Services, Work Support, and Work Order Clubhouse.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER AMENDMENT** ME.0995: Home and Community Based Services for Members with Other Related Conditions

The Department plans to submit a waiver amendment in the near future for Section 20, Home and Community Based Services for Adults with Other Related Conditions. The Department is proposing to make changes to comply with legislative directive PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. The Act provided funding for rate adjustments to reflect the rate models prepared for the Department by Burns & Associates, Inc. Increased rates will be effective starting July 1, 2020. Rates have been increased for Home Support – Level I (Quarter Hour), Home Support – Remote Support (Monitor Only), Home Support – Remote Support (Interactive Support), Career Planning, Employment Specialist Services, and Work Support.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER AMENDMENT** ME.0995: Home and Community Based Services for Members with Other Related Conditions

The Department plans to submit a waiver amendment in the near future for Section 20, Home and Community Based Services for Adults with Other Related Condition to comply with federal regulations in the 21st Century CURES Act. The proposed amendment requires every provider of

Home Support-Quarter Hour and Personal Care services to comply with Electronic Visit Verification ("EVV") system standards and requirements effective January 1, 2021.

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**WAIVER RENEWAL** ME.0476: Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department is planning to renew the Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver, known in Maine as Section 29 of the MaineCare Benefits Manual. This waiver renewal incorporates internally-generated updates to the waiver's appendices. Some of the major changes in the renewal are as follows:

- **Appendix A:** Updated Waiver Operational and Administrative Functions.
- **Appendix B:** Updated Individual Cost Limits, including Participant Safeguards, Eligibility Groups Served in the Waiver, Number of Individuals Served, Post-Eligibility Treatment of Income, Level of Care Method of Remediation, Freedom of Choice, and Access to Services.
- **Appendix C:**
  - Revised Service Definitions for Adult Foster Care/Shared Living, Home Support – Quarter Hour, Work Support-Individual, Work Support-Group, Community Support, and Career Planning to incorporate requirements for the federal Home- and Community-Based Services Settings Rule.
  - Updated Service Definitions for Home Support-Quarter Hour, Home Support-Remote Support, Work Support, Adult Foster Care/Shared Living, and Career Planning for accuracy and completeness.
  - Separated Community Supports into different tiers of service delivery: Community Only-Individual, Community Only-Group, and Center-Based, to more broadly support individualized needs of the participant population. The new services will have updated requirements and limits.
  - Updated Provider Qualifications for a Direct Support Professional delivering Career Planning, Community Support, Home Support (Quarter Hour & Remote), and Adult Foster Care/Shared Living.
  - Updated Provider Agency Standards for Career Planning.
  - Revised/updated payment for services furnished by relatives (C-2-e) to align waiver language and the MaineCare rule regarding circumstances under which payment to legal guardians for providing Shared Living services can be made.
  - Added Provisional Provider Approval to C-2-f.
  - Updated limits on Sets of Services (C-4) to include an exceptions process, additional service limitations and updated annual cost limit.

- **Appendix D:**
  - Updated and revised Service Plan Development, including Process, Risk Mitigation, Informed Choice, approval, Monitoring, and Quality Improvement Measures, for accuracy and completeness.
  - Added qualifications for Case Managers and Social Workers.
- **Appendix F:** Updated Opportunity to Request a Fair Hearing, Dispute Resolution, and the State Grievance and Complaint System, for completeness and accuracy.
- **Appendix G:**
  - Updated Response to Critical Events, Safeguards Concerning Restraints, and Medication Monitoring for completeness and accuracy
  - Included protocols and processes for reportable events; critical incidents; and allegations of abuse, neglect and/or exploitation.
  - Amended and updated performance measures for the next waiver cycle.
- **Appendix H:** Updated the System Improvement Plan to align with the HCBS Quality Framework.
- **Appendix I:** Updated Financial Integrity, Accountability, and Rate Setting Methodology. Furthermore, rates and caps have been amended to comply with legislative directive PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021*. The rates for certain services will now reflect the rate models prepared for the Department by Burns & Associates, Inc in July 2020.
- **Appendix J:** Updated and included Cost Neutrality and Derivation of Estimates for the five years of the waiver renewal (through December 31, 2025).

**AGENCY CONTACT PERSON:** Tom Leet

***Comment period: CLOSED***

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**1115 DEMONSTRATION WAIVER FOR THE IMD EXCLUSION FOR MEMBERS WITH SUD, and SMI/SED**

DHHS is seeking waiver authority under Section 1115 to claim Federal Financial Participation (FFP) for the medically necessary services provided to eligible individuals ages 21-64 with a Substance Use Disorder (SUD), Serious Mental Illness (SMI) and/or children with Serious Emotional Disturbance (SED), residing in facilities meeting the regulatory definition of an Institute for Mental Disease (IMD). Current Medicaid statue does not allow FFP for care or services for any individual who has not attained 65 years of age and who is a patient in an IMD. This restriction is known as Medicaid's IMD exclusion. This 1115 waiver will provide the state flexibility in the service delivery system with the aim of expanding access to treatment modalities and bridging medical and behavioral health needs to ensure a full continuum of care for people with SUD and SMI/SED.

| **Hearing 1: Augusta Public Hearing** | **Hearing 2: Portland Public Hearing** |
|---|---|
| Date: March 6, 2019<br>Time: 10:00 AM<br>Location: 111 Sewall St. Augusta, Maine 04330<br>Room 103A&B<br>Conference Line: 1-877-455-0244<br>Passcode: 7319892834 | Date: March 7, 2019<br>Time: 10:00 AM<br>Location: 151 Jetport Blvd. Portland, ME 04101<br>Room 139A&B<br>Conference Line: 1-877-455-0244<br>Passcode: 7319892834 |

**NOTE:** CMS has issued approval for the IMD portion of the waiver.

**STAFF:** Dean Bugaj

***Comment period: CLOSED***